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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGERS BUTLER, JR.,

Defendant and Appellant.

D052675

(Super. Ct. No. SCD194350)

APPEAL from a judgment of the Superior Court of San Diego County, Gale E. Kaneshiro, Judge. Affirmed as modified and remanded.

In 2006 Rogers Butler, Jr., entered a negotiated guilty plea to selling cocaine base (Health & Saf. Code, § 11352, subd. (a)) and possessing cocaine base for sale (Health & Saf. Code, § 11351.5) and admitted a prior conviction under Health and Safety Code section 11370.2, subdivision (a) and a prior prison term (Pen. Code, § 667.5, subd. (b)).<sup>1</sup> The court placed him on three years' probation, imposed a \$400 restitution fine (§ 1202.4,

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

subd. (b)) and suspended a \$400 probation revocation fine (§ 1202.44). In 2008 the court revoked probation, dismissed the prison prior, and sentenced Butler to six years in prison: three-year lower term for selling cocaine base, a stayed term (§ 654) for possessing cocaine base for sale, and three years for the Health and Safety Code section 11370.2, subdivision (a) prior conviction. It imposed a \$600 restitution fine and suspended a \$600 parole revocation fine (§ 1202.45).

Butler appeals, contending the court lacked authority to impose the \$600 restitution and parole revocation fines because it originally imposed \$400 restitution and probation revocation fines. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 821-823; *People v. Downey* (2000) 82 Cal.App.4th 899, 921-922; *People v. Johnson* (2003) 114 Cal.App.4th 284, 306-308.) The People properly concede the point. We accordingly modify the judgment to reflect a \$400 restitution fine and a \$400 parole revocation fine in place of the \$600 fines. Additionally, the record does not reflect that the court lifted the stay on the \$400 probation revocation fine. The abstract of judgment must be modified accordingly. (*People v. Guiffre* (2008) 167 Cal.App.4th 430.)

## DISPOSITION

The judgment is modified to reflect a \$400 restitution fine (§ 1202.4, subd. (b)) and a \$400 parole revocation fine (§ 1202.45) in place of the \$600 fines and to reflect that the \$400 probation revocation fine (§ 1202.44) is now due. The trial court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

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HUFFMAN, Acting P. J.

WE CONCUR:

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McINTYRE, J.

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AARON, J.